

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD F. WHITE JR.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	C. A. No. 05C-53 GMS
	:	
FED EX GROUND PACKAGING	:	
SYSTEMS,	:	
	:	
Defendant.	:	

DEFENDANT FED EX GROUND PACKAGING SYSTEMS' TRIAL BRIEF

(A.) NATURE OF THE CASE.

This action for personal injuries arises out of a motor vehicle accident that occurred on Prospect Avenue, Berlin Township, New Jersey, on August 27, 2003. Plaintiff was operating a vehicle on Prospect Avenue when a Fed Ex delivery truck, operated by Thomas Salvo, backed out of a residential driveway onto Prospect Avenue. The two vehicles collided. Plaintiff claims that he sustained bodily injuries as a direct result of the accident. Agency and liability on the part of the defendant is not disputed, but there remains for determination by the jury issues of comparative negligence, the nature and extent of the plaintiff's alleged injuries and losses, and the amount of money damages which would fairly and reasonable compensate him for those alleged injuries and losses.

(B.) - (C.) CONTESTED FACTS AND DEFENDANT'S THEORY OF DEFENSE.

Negligence on the part of defendant Fed Ex Ground Packaging Systems' agent, Thomas Salvo, has been admitted. Mr. Salvo backed his delivery truck out of a residential driveway into the roadway and into the side of the Plaintiff's vehicle which was proceeding

down the roadway. However, the driveway in question was a long driveway, the Plaintiff's view of the driveway and the Fed Ex truck backing down the driveway was unobstructed, Plaintiff was unable to see Mr. Salvo inside the delivery truck, and the Plaintiff failed to sound his horn or otherwise warn Mr. Salvo that he was present on the roadway. It is the Defendant's contention that Plaintiff failed to maintain a proper lookout, failed to control the operation of his vehicle so as to avoid the collision, and failed to sound his horn or otherwise warn the driver of the Fed Ex delivery truck that he was present on the roadway even upon observing that the truck was not stopping as it backed down the driveway. (Del. C. Ann. Title 21, § 4176(b) 1995); *Triebel v. Sabo*, 714 A.2d. 742, 745 (Del. Supr. 1998); *State v. Elliott*, 8 A.2d 873, 875-76 (1939); *Djetz v. Mead*, 160 A.2d. 372, 376 (Del. 1960).

(D). DEFENDANT'S THEORY OF DAMAGES.

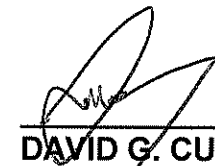
Defendant Fed Ex Ground Packaging Systems had the Plaintiff independently examined by Dr. Andrew Gelman. Dr. Gelman is a Board-certified orthopaedic surgeon. It is Dr. Gelman's opinion that Mr. White suffered from a long-standing pre-existing history of musculoskeletal problems involving prior fusion surgery to the C6-7 level of the cervical spine, cervical spine degenerative disc disease, and shoulder problems (subacromial impingement). It is Dr. Gelman's opinion that these pre-existing conditions were aggravated or exacerbated by the subject motor vehicle accident, but were not caused by the accident. It is further Dr. Gelman's opinion that Mr. White's left wrist and hand problems, diagnosed as carpal tunnel syndrome, pre-existed and are unrelated to the motor vehicle accident. In addition, it is Dr. Gelman's opinion that Mr. White's low back condition was not caused by the motor vehicle accident as its onset occurred too remotely in time. It is further Dr. Gelman's opinion that much of the pain management treatment Mr.

White received from Mid Atlantic Pain Institute was not reasonable or necessary and that Mr. White requires no additional formal medical care for his injuries after his examination of November 4, 2005. Finally, it is Dr. Gelman's opinion that Mr. White is capable of working on a full time basis and engaging in his activities of daily living without any restrictions or limitations related to the automobile accident.

(E). ANTICIPATED MOTION FOR DIRECTED VERDICT.

Defendant Fed Ex Ground Packaging Systems does not anticipate any Motion for Directed Verdict.

TYBOUT, REDFEARN & PELL



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